

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4662

To amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation and disposal of municipal solid waste, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1994

Mr. SMITH of New Jersey (for himself, Mr. ZIMMER, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation and disposal of municipal solid waste, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Flow Control Act of  
5       1994”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE CON-**  
2 **TROL OVER TRANSPORTATION AND DIS-**  
3 **POSAL OF MUNICIPAL SOLID WASTE.**

4 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-  
5 posal Act (42 U.S.C. 6941 et seq.) is amended by adding  
6 at the end the following new section:

7 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**  
8 **CONTROL OVER TRANSPORTATION AND DIS-**  
9 **POSAL OF MUNICIPAL SOLID WASTE.**

10 “(a) AUTHORITY.—

11 “(1) IN GENERAL.—Each State and each quali-  
12 fied political subdivision may, in accordance with  
13 this section—

14 “(A) direct, limit, regulate, or prohibit the  
15 transportation of municipal solid waste gen-  
16 erated from household sources (as described in  
17 subsection (g)(2)(A)(i)) within the boundaries  
18 of the State or subdivision and designate each  
19 waste management facility to which any such  
20 municipal solid waste shall be transported;

21 “(B) direct, limit, regulate, or prohibit the  
22 transportation or disposal of municipal solid  
23 waste, as defined in subsection (g)(2), including  
24 incinerator ash from a solid waste incinerator  
25 unit or construction debris or demolition debris,  
26 generated within the boundaries of the State or

1 qualified political subdivision and designate  
2 waste management facilities to which any such  
3 municipal solid waste shall be transported or  
4 disposed, if, before May 15, 1994—

5 “(i) the State or qualified political  
6 subdivision adopted a law, ordinance, regu-  
7 lation or legislative or administrative provi-  
8 sion, including a solid waste management  
9 plan, that pertains to the transportation or  
10 disposal of municipal solid waste generated  
11 within the boundaries, and

12 “(ii) directed, limited, regulated, or  
13 prohibited the transportation or disposal of  
14 municipal solid waste under the law, ordi-  
15 nance, regulation, or legislative or adminis-  
16 trative provision.

17 Any State or qualified political subdivision  
18 meeting the requirements of this subsection  
19 (a)(1)(B) (i) and (ii) may also, after the effec-  
20 tive date of this amendment, direct, limit, regu-  
21 late or prohibit the transportation and disposal  
22 of municipal solid waste from any existing or  
23 future waste management facility to any other  
24 existing or future waste management facility,  
25 without regard to subsections (b) or (c); and

1           “(C) direct, limit, regulate, or prohibit the  
2           transportation of recyclable materials generated  
3           within the boundaries of the State or subdivi-  
4           sion and designate each facility to which any  
5           such materials shall be transported.

6           “(2) APPLICATION.—A State or qualified politi-  
7           cal subdivision may exercise the authority described  
8           in paragraph (1)(C) with respect to recyclable mate-  
9           rials only if—

10           “(A) the generator or owner of the mate-  
11           rials voluntarily made the materials available to  
12           the State or qualified political subdivision and  
13           relinquished any rights to, or ownership of,  
14           such materials; and

15           “(B) the State or qualified political sub-  
16           division, or the designee of the State or quali-  
17           fied political subdivision, assumes such rights  
18           to, or ownership of, such materials.

19           “(b) LIMITATIONS.—A State or qualified political  
20           subdivision may exercise the authority provided by sub-  
21           section (a)(1)(A) or (a)(1)(C) only if the State or qualified  
22           political subdivision—

23           “(1) establishes a program to separate or divert  
24           the materials described in subsection (g)(4) from the  
25           municipal solid waste, for purposes of recycling, rec-

1       lamation, or reuse, in accordance with any State law  
2       or municipal solid waste planning requirements in  
3       effect;

4           “(2) develops and implements a process de-  
5       scribed in subsection (c) for the designation of waste  
6       management facilities; and

7           “(3) after conducting 1 or more public hear-  
8       ings—

9           “(A) finds, on the basis of the record de-  
10      veloped at the hearing or hearings that it is  
11      necessary to exercise the authority to meet the  
12      current solid waste management needs (as of  
13      the date of the record) or the anticipated solid  
14      waste management needs of the State or quali-  
15      fied political subdivision for management of  
16      municipal solid waste or recyclable materials;  
17      and

18           “(B) provides a written explanation of the  
19      reasons for the finding described in subpara-  
20      graph (A).

21      “(c) COMPETITIVE DESIGNATION PROCESS.—In de-  
22      veloping and implementing the designation process de-  
23      scribed in subsection (b)(2) with respect to waste manage-  
24      ment facilities and facilities for recyclable materials, the  
25      State or qualified political subdivision shall—

1           “(1) provide that the designation process is  
2           based on, or is part of, a municipal solid waste man-  
3           agement plan that is adopted by the State or quali-  
4           fied political subdivision and that is designed to en-  
5           sure long-term management capacity for municipal  
6           solid waste or recyclable materials generated within  
7           the boundaries of the State or subdivision;

8           “(2) set for the goals of the designation proc-  
9           ess, including at a minimum—

10                 “(A) capacity assurance;

11                 “(B) the establishment of provisions to  
12                 provide that protection of human health and the  
13                 environment will be achieved; and

14                 “(C) any other goals determined to be rel-  
15                 evant by the State or qualified political subdivi-  
16                 sion;

17           “(3) identify and compare reasonable and avail-  
18           able alternatives and options for designation of the  
19           facilities;

20           “(4) provide for public participation and com-  
21           ment;

22           “(5) provide that the designation of the facili-  
23           ties is accomplished through an open competitive  
24           process during which the State or qualified political  
25           subdivision—

1           “(A) identifies in writing the criteria to be  
2 utilized for selection of the facilities;

3           “(B) provides an opportunity for interested  
4 public persons and private persons to offer their  
5 existing (as of the date of the process) or pro-  
6 posed facilities for designation; and

7           “(C) evaluates and selects the facilities for  
8 designation based on the merits of the facilities  
9 in meeting the criteria identified; and

10          “(6) base the designation of each such facility  
11 on reasons that shall be stated in a public record.

12          “(d) OWNERSHIP OF RECYCLABLE MATERIALS.—

13           “(1) PROHIBITION ON REQUIRED TRANS-  
14 FERS.—Except as provided in paragraph (3), noth-  
15 ing in this section shall authorize any State or quali-  
16 fied political subdivision to require any generator or  
17 owner of recyclable materials to transfer any recycla-  
18 ble materials (other than abandoned or discarded  
19 materials) to such State or qualified political sub-  
20 division.

21           “(2) PROHIBITION ON PROHIBITED TRANS-  
22 ACTIONS.—Except as provided in paragraph (3),  
23 nothing in this section shall prohibit any generator  
24 or owner of recyclable materials from selling, pur-  
25 chasing, accepting, conveying, or transporting any

1 recyclable materials for purposes of transformation  
2 or remanufacture into usable or marketable mate-  
3 rials, unless the generator or owner voluntarily made  
4 the materials available to the State or qualified po-  
5 litical subdivision and relinquished any rights to, or  
6 ownership of, such materials,

7 “(3) LAW AND CONTRACTS.—A contract, law,  
8 ordinance, regulations, or provisions described in  
9 subsection (e)(1) may contain an authorization de-  
10 scribed in paragraph (1) or a prohibition described  
11 in paragraph (2).

12 “(e) EXISTING LAWS AND CONTRACTS.—

13 “(1) IN GENERAL.—This section shall not su-  
14 persede, abrogate, or otherwise modify any of the  
15 following:

16 “(A) Any contract or other agreement (in-  
17 cluding any contract containing an obligation to  
18 repay to outstanding indebtedness on any pro-  
19 posed or existing waste management facility or  
20 facility for recyclable materials) entered into be-  
21 fore May 15, 1994, by a State or qualified po-  
22 litical subdivision in which such State or quali-  
23 fied political subdivision has designated a pro-  
24 posed or existing waste management facility, or  
25 facility for recyclable materials, for the manage-



1           ment of municipal solid waste or recyclable ma-  
2           terials pursuant to a law, ordinance, regulation,  
3           legislative or administrative provision adopted  
4           by such State or qualified political subdivision  
5           before May 15, 1994.

6           “(B) Any other contract or agreement en-  
7           tered into before May 15, 1994, for the man-  
8           agement of municipal solid waste.

9           “(C)(i) Any law, ordinance, regulation or  
10          legislative or administrative provision—

11               “(I) that is adopted before May 15,  
12               1994; and

13               “(II) that pertains to the transpor-  
14               tation or disposal of municipal solid waste  
15               generated within the boundaries of a State  
16               or qualified political subdivision: *Provided*,  
17               That the law, ordinance, regulation, legis-  
18               lative or administrative provision is applied  
19               to the transportation or disposal of munici-  
20               pal solid waste, generated from household  
21               sources (as described in subsection  
22               (g)(2)(A)(i)) within the boundaries, to a  
23               proposed or existing waste management fa-  
24               cility designated before May 15, 1994

1 under such law, ordinance, regulation, leg-  
2 islative or administrative provision.

3 “(ii) Any law, ordinance, regulation, or leg-  
4 islative or administrative provision—

5 “(I) that is adopted before May 15,  
6 1994;

7 “(II) that pertains to the transpor-  
8 tation or disposal of municipal solid waste  
9 generated within the boundaries of a State  
10 or qualified political subdivision; and

11 “(III) under which a State or quali-  
12 fied political subdivision, prior to May 15,  
13 1994, directed, limited, regulated, or pro-  
14 hibited to transportation or disposal of mu-  
15 nicipal solid waste that is generated, or is  
16 commingled with municipal solid waste  
17 that is generated, from commercial, insti-  
18 tutional or industrial sources within the  
19 boundaries, or that is incinerator ash from  
20 a solid waste incineration unit, or con-  
21 struction debris or demolition debris, gen-  
22 erated within the boundaries:

23 *Provided*, That the law, ordinance, regulation,  
24 legislative or administrative provision is applied  
25 to the transportation or disposal of municipal

1 solid waste described in subclause (III), to a  
2 proposed or existing waste management facility  
3 designated before May 15, 1994 under such  
4 law, ordinance, regulation, legislative or admin-  
5 istrative provision.

6 “(iii) Any law, ordinance, regulation, or  
7 legislative or administrative provision—

8 “(I) that is adopted before May 15,  
9 1994; and

10 “(II) that pertains to the transpor-  
11 tation of recyclable materials generated  
12 within the boundaries of a State or quali-  
13 fied political subdivision; provided that the  
14 law, ordinance, regulation, legislative or  
15 administrative provision is applied to the  
16 transportation of recyclable materials, that  
17 are generated within the boundaries and  
18 with respect to which the generator or  
19 owner of the materials, and the State or  
20 qualified political subdivision, have met the  
21 appropriate conditions described in sub-  
22 section (a)(2), to a facility designated be-  
23 fore May 15, 1994 under such law, ordi-  
24 nance, regulation, legislative or administra-  
25 tive provision.

1           “(iv) Any law, ordinance, regulation, or  
2 legislative or administrative provision—

3           “(I) that is adopted before May 15,  
4 1994;

5           “(II) that pertains to the transpor-  
6 tation of recyclable materials generated  
7 within the boundaries of a State or quali-  
8 fied political subdivision; and

9           “(III) under which a State or quali-  
10 fied political subdivision, prior to May 15,  
11 1994, directed, limited, regulated, or pro-  
12 hibited the transportation of recyclable ma-  
13 terials that are not materials with respect  
14 to which the generator or owner of the ma-  
15 terials, and the State or qualified political  
16 subdivision, have met the appropriate con-  
17 ditions described in subsection (a)(2) and  
18 that—

19           “(aa) are generated from house-  
20 hold sources (as described in sub-  
21 section (g)(2)(A)(i)) within the bound-  
22 aries; or

23           “(bb) are generated from com-  
24 mercial, institutional, or industrial  
25 sources within the boundaries:

1           *Provided*, That the law, ordinance, regula-  
2           tion, legislative or administrative provision  
3           is applied to the transportation of recycla-  
4           ble materials, described in subclause (III),  
5           to a facility designated before May 15,  
6           1994 under such law, ordinance, regula-  
7           tion, legislative or administrative provision,  
8           and is applied to the same class of mate-  
9           rials described in item (aa) or (bb) of  
10          subclause (III) to which the law, ordi-  
11          nance, regulation, legislative or administra-  
12          tive provision applied before such date.

13           “(2) CONTRACT INFORMATION.—A party to a  
14          contract or other agreement that is described in sub-  
15          paragraph (e)(1)(A) or (e)(1)(B) shall provide a  
16          copy of the contract or agreement to the State or  
17          qualified political subdivision on request. Any propri-  
18          etary information contained in the contract or agree-  
19          ment may be omitted in the copy, but the informa-  
20          tion that appears in the copy shall include at least  
21          the date that the contract or agreement was signed,  
22          the volume of municipal solid waste or recyclable  
23          materials covered by the contract or agreement with  
24          respect to which the State or qualified political sub-  
25          division could otherwise exercise authority under

1 subsection (a) or (e)(1)(C), the source of the waste  
2 or materials, the destination of the waste or mate-  
3 rials, the duration of the contract or agreement, and  
4 the parties to the contract or agreement.

5 “(3) EFFECT ON INTERSTATE COMMERCE.—  
6 Any contract or agreement described in subsection  
7 (e)(1)(A) or (e)(1)(B), and any law, ordinance, regu-  
8 lation, or legislative or administrative provision de-  
9 scribed in subsection (e)(1)(C), shall be a reasonable  
10 regulation of commerce by any State or qualified po-  
11 litical subdivision, retroactive to the effective date of  
12 the contract or agreement, or to the date of adoption  
13 of any such law, ordinance, regulation, or legislative  
14 or administrative provision.

15 “(4) EFFECT ON STATE PROCUREMENT  
16 LAWS.—

17 “(A) IN GENERAL.—Nothing in this sec-  
18 tion shall supersede or modify—

19 “(i) any State law or State regulation  
20 concerning the procurement of municipal  
21 solid waste services or facilities by qualified  
22 political subdivisions; or

23 “(ii) any State law or regulation con-  
24 cerning competitive bidding for such serv-  
25 ices or facilities.

1       “(f) SAVINGS CLAUSE.—Nothing in this section is in-  
2 tended to supersede, amend, or otherwise modify Federal  
3 or State environmental standards that apply to the dis-  
4 posal or management of solid waste at waste management  
5 facilities and facilities for recyclable materials.

6       “(g) DEFINITIONS.—As used in this section:

7               “(1) INDUSTRIAL SOLID WASTE.—The term ‘in-  
8 dustrial solid waste’ means solid waste generated by  
9 manufacturing or industrial processes, including  
10 waste generated during scrap processing and recy-  
11 cling, that is not hazardous waste regulated under  
12 subtitle C.

13               “(2) MUNICIPAL SOLID WASTE.—

14                       “(A) IN GENERAL.—The term ‘municipal  
15 solid waste’—

16                               “(i) means any waste generated by a  
17 household, including a single or multifam-  
18 ily residence, an apartment, a condomin-  
19 ium, a hotel, and a motel;

20                               “(ii) includes waste generated by a  
21 commercial, institutional, or industrial  
22 source; and

23                               “(iii) includes residue remaining after  
24 recyclable materials have been separated,  
25 or diverted at the point of generation, from

1           municipal solid waste described in clause  
2           (i) or (ii).

3           “(B) EXCLUSIONS.—The term ‘municipal  
4           solid waste’ shall not include any of the follow-  
5           ing:

6                   “(i) Hazardous waste required to be  
7                   managed in accordance with subtitle C,  
8                   solid waste containing a polychlorinated  
9                   biphenyl regulated under the Toxic Sub-  
10                  stances Control Act (15 U.S.C. 2601 et  
11                  seq.), or regulated medical waste.

12                  “(ii) A RECYCLABLE MATERIAL.—

13                   “(I) A material or a product re-  
14                   turned from a dispenser or distributor  
15                   to the manufacturer or the agent of  
16                   the manufacturer for credit, evalua-  
17                   tion, or reuse.

18                   “(II) A material or product that  
19                   is an out-of-date or unmarketable ma-  
20                   terial or product, or is a material or  
21                   product that does not conform to  
22                   specifications, and that is returned to  
23                   the manufacturer or the agency of the  
24                   manufacturer for credit, evaluation, or  
25                   reuse.



1           “(iii) Any solid waste (including con-  
2           taminated soil and debris) resulting from a  
3           response action taken under section 104 or  
4           106 of the Comprehensive Environmental  
5           Response, Compensation, and Liability Act  
6           of 1980 (42 U.S.C. 9604 or 9606) or a  
7           corrective action taken under this Act.

8           “(iv) INDUSTRIAL SOLID WASTE.—  
9           Any industrial solid waste that is gen-  
10          erated by an industrial facility and trans-  
11          ported for the purpose of containment,  
12          storage, or disposal to a facility that is  
13          owned or operated by the generator of the  
14          waste, or a facility that is located on prop-  
15          erty owned by the generator or a company  
16          with which the generator is affiliated.

17          “(3) QUALIFIED POLITICAL SUBDIVISION.—The  
18          term ‘qualified political subdivision’ means a govern-  
19          mental entity or political subdivision of a State, as  
20          authorized by the State, to plan for, or determine  
21          the methods to be utilized for, the collection, trans-  
22          portation, disposal or other management of municip-  
23          al solid waste generated within the boundaries of  
24          the governmental entity or political subdivision.

1           “(4) RECYCLABLE MATERIAL.—The term ‘recy-  
 2       clable material’ means any material (including any  
 3       metal, glass, plastic, textile, wood, paper, rubber, or  
 4       other material) that has been separated, or diverted  
 5       at the point of generation, from solid waste for the  
 6       purpose of recycling, reclamation, or reuse.

7           “(5) WASTE MANAGEMENT FACILITY.—The  
 8       term ‘waste management facility’ means any facility  
 9       in which solid waste is collected, separated, stored,  
 10      transferred, treated, processed, deposited or dis-  
 11      posed.”.

12       (b) TABLE OF CONTENTS.—The table of contents for  
 13   such subtitle D is amended by adding after the item relat-  
 14   ing to section 4010 the following new item:

“Sec. 4011. Congressional authorization of State control over transportation and  
 disposal of municipal solid waste.”.



HR 4662 IH——2

HR 4662 IH——3